

### REMARKS

This responds to the Office Action dated September 17, 2007. Claims 1, 15, 25, 33, and 37 are amended, and claims 40 and 41 are added; as a result claims 1 and 3-41 are pending in this patent application.

#### Examiner Interview

Applicant thanks Examiner Flory for the telephonic interview with Applicant's representative Paul Urbanski on April 7, 2008. A proposed amendment to claim 1 and a proposed amendment to claim 37 were discussed. It was agreed that the amendment to claim 1 was sufficient to overcome the rejections in the Office Action. No agreement was reached as to the amendment to claim 37.

The Examiner brought two references to the attention of the Applicant: Brashears (U.S. Patent No. 6,985,762) and Labounty (U.S. Patent No. 6,871,211). Claim 37 is amended. Applicant believes that all pending claims are in allowable form, for the reasons discussed below. Accordingly, Applicant respectfully requests allowance of all pending claims.

#### §103 Rejection of the Claims

1. Claims 1, 3-5, 13-18, 23-28 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel et al. (U.S. Publication No. 2002/0049480A1, hereinafter "Lebel'480") in view of Webb et al. (U.S. 6,699,187, hereinafter "Webb"). Applicant respectfully traverses the rejection as applied to the claims in their present form.

Applicant respectfully submits that no *prima facie* case of obviousness presently exists because the cited portions of Lebel'480 and Webb fail to teach at least some of the elements presently recited or incorporated in the claims.

For example, Applicant cannot find in the cited portions of Lebel'480 or Webb, among other things, any disclosure of

analyzing the transport control information of the header data of each received packet to reorder the data received in the packets, when the data in the packets is received out of sequence, to reconstruct the application data,

as presently recited in claims 1 and 15 and incorporated into claims 3-5, 13-18, and 23-24. Nor can Applicant find

transport control information permitting reordering of the data received in the packets when the application data in the packets is received out of sequence, to reconstruct the application data,

as presently recited in claim 25 and incorporated into claims 26-28 and 32.

The Office Action concedes that Lebel'480 does not expressly disclose analyzing the transport control information of the header data, but states that data in the Webb system can be determined to be of a specific [display] position within a specific packet when transmitted within data from other packets being reconstructed.<sup>1</sup> The Office Action further states that the data sent in Webb is out of sequence for the very fact that only small segments of the full display stream are transmitted since only small segments might contain changes as outlined in Webb.<sup>2</sup>

However, Webb states that by transferring only the leading edge of the physiological waveform, the amount of data can be significantly reduced.<sup>3</sup> Webb also states that

the header section [of a packet of data] includes a bit corresponding to each of the regions in a display window such as region 110 in FIG. 7. Each bit of the header is set to a predetermined state to indicate whether or not the corresponding region includes changed data. ... Assuming that each byte [of the data section] represents a row of the snap-shot 114 of region 110, and further assuming that the first byte of data corresponds to the bottom pixels of snap-shot 114, the second byte corresponds to the adjacent eight pixels...<sup>4</sup>

Thus, Webb apparently describes sending data in the data section for adjacent regions in sequence.

Webb further states the location of each region of screen data such as region 110 is stored in a look up table.<sup>5</sup> The Office Action states that [the look up table] would allow partial (i.e., out of sequence, or a position sequence different from the receive sequence) transfer of data to be translated into a complete display. However, because Webb refers to transferring only the leading edge of the physiological waveform, and because updates to a remote screen may be

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<sup>1</sup> Office Action, carryover sentence pg.3 to pg. 4.

<sup>2</sup> Office Action, pg. 8.

<sup>3</sup> Webb, col. 9 lines 38-40.

<sup>4</sup> Webb, col. 10 lines 27-57.

<sup>5</sup> Webb, col. 10 lines 63-67.

accomplished in substantially real time,<sup>6</sup> Applicant respectfully submits that Webb does not teach or suggest reordering the data received in the packets when the data in the packets is received out of sequence, as similarly recited or incorporated in the claims. Applicant respectfully submits that such reordering would merely frustrate displaying only the leading edge in real time.

Additionally, Applicant respectfully submits that one of ordinary skill in the art would not reasonably have looked to combine Lebel'480 and Webb. Lebel'480 refers to RF communication between an implantable device and an external device<sup>7</sup> and to minimizing power consumption of the implantable medical device, such as by keeping a device listening period small,<sup>8</sup> an automatic off feature,<sup>9</sup> and a receiver remaining in a powered down state most of the time.<sup>10</sup> Webb refers to a system for allowing medical data obtained at a local site to be transferred to a data processing system at a remote site to allow a remotely-located expert to participate in a procedure at the local site,<sup>11</sup> and states that the medical data may include a display window on a programmer screen.<sup>12</sup> Webb also refers to a standard seven-layer communication stack adapted with a special application layer 62a to handle the data.<sup>13</sup> However, Webb does not appear to disclose using the adapted off-the-shelf communication stack to transfer data from an implantable medical device.<sup>14</sup> Applicant submits that one of ordinary skill in the art would not have reasonably looked to Webb to transfer data from an implantable device using the adapted off-the-shelf communication stack because of the desire to minimize power consumption of the implantable medical device as taught by Lebel'480.

The Office Action states that motivation to combine is provided by Webb column 10, lines 39-41,<sup>15</sup> which states that "regions of the display that are indicated as not including changed data are not associated with data in the data portion of the packet," and that "this reduces the amount of data that needs to be transferred [for a display]." However, because Lebel'480 refers

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<sup>6</sup> Webb, col. 9 lines 58-60.

<sup>7</sup> Lebel, ¶ 0298.

<sup>8</sup> Lebel, ¶ 0131.

<sup>9</sup> Lebel, ¶ 0175.

<sup>10</sup> Lebel, ¶ 0312.

<sup>11</sup> Webb, Abstract.

<sup>12</sup> Webb, col. 9 lines 16-18.

<sup>13</sup> Webb, col. 7 line 63 to col. 8 line 5.

<sup>14</sup> Webb, FIG. 1.

<sup>15</sup> Office Action, pg. 12.

to RF communication with an implantable device, and because neither Lebel'480 nor Webb describe how an implantable device would determine what regions of the display do not include changed data, one of ordinary skill in the art would not reasonably have looked to combine Lebel'480 and Webb.

Applicant respectfully requests reconsideration and allowance of claims 1, 3-5, 13-18, 23-28 and 32.

2. Claims 6-12, 19-22 and 29-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel'480 in view of Webb as applied to claims 1, 3-5, 13-18, 23-28 and 32 above, and further in view of Lee (U.S. Publication No. 2001/0031997A1).

Claims 6-12 ultimately depend on base claim 1, claims 19-22 ultimately depend on base claim 15, and claims 29-31 ultimately depend on base claim 25. As set forth above, Applicant believes the base claims to be allowable at least for the reason that the proposed combination of Lebel'480 and Webb does not teach or suggest all of the elements presently recited in the base claims. Lee does not teach or suggest the missing elements.

Applicant respectfully requests reconsideration and allowance of claims 6-12, 19-22 and 29-31.

3. Claims 33-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel'480 in view of Webb'187 as applied to claims 1, 3-5, 13-18, 23-28 and 32 above, and further in view of Nappholz et al. (U.S. Patent No. 5,720,770, hereinafter "Nappholz").

Applicant respectfully traverses the rejection as applied to the claims in their present form.

Applicant respectfully submits that no *prima facie* case of obviousness presently exists because the cited portions of Lebel'480, Webb, and Nappholz apparently fail to teach at least some of the elements presently recited or incorporated in the claims. For example, Applicant cannot find in the cited portions of the proposed combination of Lebel'480, Webb and Nappholz,

first and second transport control header information [that] includes information as to how application data may be reconstructed from the data packets and to reorder the data received in the packets to reconstruct the application data when the data in the packets is received out of sequence,

as presently recited in claim 33 and incorporated into claims 34-36 and similarly recited in claim 37 and incorporated into claims 38 and 39. As set forth above, neither Lebel'480 nor Webb teach or suggest transport control header information [that] includes information to reorder the data as recited or incorporated into the claims. Applicant respectfully submits that Nappholz fails to teach or suggest the missing elements.

Therefore, Applicant respectfully submits that the proposed combination of Lebel'480, Webb and Nappholz does teach or suggest some of the elements recited or incorporated into claims 33-39. Applicant respectfully requests reconsideration and allowance of claims 33-39.

For brevity, Applicant defers but reserves the right to present further remarks in regard to the rejection of claims 1 and 3-39 under 35 U.S.C. § 103, such as concerning the dependent claims, which are believed separately patentable based upon their additional language.

*New Claims*

Claims 40 and 41 are new. Applicant respectfully requests entry of the new claims for examination.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 371-2172 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date May 2, 2008

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 2 day of May 2008.

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